

#### REMARKS

Claims 1-20 are pending. Claims 1-20 were rejected. Applicant amends claims 4, 7, 10, 13, 16-18.

Applicant discloses U. S. Patent No. 494,390 discovered in preparation for a separately filed patent application. It is unknown if the '390 patent disclosed herewith was know to any parties responsible for the filing and/or prior prosecution of the present application.

Claims 10-20 were rejected under the judicially created doctrine of double patenting over claims 1-47 of U.S. Patent No. 6,618,993. Then Examiner asserted that the subject matter claimed in the present application is covered by the '933 patent and no apparent reason exists why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the ['993] application.

Applicant notes that apparently *only* a *passing* reference was made in the '993 patent to "triggering" (col. 5, line 47) the embodiments "through a PLC," (col. 5, line 51) and that the scope of pending claims 10-20, as amended, differ sufficiently to traverse the Examiner's assertion of improperly extending the right to exclude of the '933 patent. Applicant therefore believes that the double patenting rejection of claims 10-20, as amended, is overcome.

Claims 1-6 were rejected under 35 USC 103(a) as being unpatentable over Carr in view of Bertieri et al, wherein the examiner argues that Carr discloses a crossing assembly comprising

a gate means connectable to a stanchion and movable between a generally upright position to permit access therethrough, and a controller (38) for controlling the function and operation of the door. While the Examiner admits that Carr fails to disclose a programmable controller using relays and wireless links, the Examiner asserts that Bertieri discloses a controller using relays and wireless remote control links to program and operate a movable closure, and that it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the assembly of Carr with a programmable controller as taught by Bertieri.

Claim 7 was rejected further in view of Keeling et al.

Claims 8 and 9 were rejected further in view of Fox or Loban et al.

Applicant notes that in Bertieri, only the hand-held remote control 12, which issues an infrared signal to be received by a receiver 14 and then a controller 16, is programmable. The term 'control' in the remote control 12 apparently is only relevant with regard to human control of an infrared input to the apparatus of Bertieri. It is the controller 16 which controls the appliance(s).

By contrast, the apparatus of claim 1, comprises

"gate means connectable to a stanchion and movable between a generally upright position to permit access across the railroad crossing and a generally horizontal position for blocking access across the railroad crossing; and  
programmable electronic means for controlling operation of said gate means,


not found in the cited art of record. The Examiner agrees that Carr does not provide the claimed programmable electronic means.

Bertieri shows only a programmable hand-held remote control, well known in many arts to be wholly distinct from any control means or programmable electronic means for controlling any operation as disclosed and defined in the present application. The hand-held device of Bertieri, coincidentally called a "control" merely converts the physical human input to a selected infrared signal, which if not ultimately received by an appliance controller, would control nothing. Therefore, Applicant argues that the hand-held controller 12 and its analogs provide no structure which can be combined with Carr to provide the present claimed invention.

Furthermore, the appliance controllers 16, 40 of Bertieri provide no disclosure, teaching or suggestion of programming thereof. Thus Applicant further argues that Bertieri is inadequate to provide the missing structure which together with Carr would provide the invention of claim 1, and that either cite does not teach, suggest or disclose any such claimed combination. The claims dependent on claim 1 provide additional inventive features which further patentably distinguish the present invention over the cited art of record. Applicant therefore believes that the rejection of claims 1-6 under 35 USC 103(a) as being unpatentable over Carr in view of Bertieri et al, and the rejection of claims 7 further in view of Keeling et al., and the rejection of claims 8 and 9 further in view of Fox or Loban et al, is without basis and should be withdrawn, or in the alternative, is overcome.

Applicant, having amended the Claims, and having distinguished the present invention over the cited art of record, believes that the objections and rejections to the present application are overcome. Applicant respectfully requests reconsideration and allowance of the present application. The Examiner is invited to call the Applicant's undersigned attorney should he feel that such a call would further the prosecution of the present application.

Respectfully submitted,  
Thomas J. Burke

  
By Joanne M. Martin, Reg. No. 29,328  
40 North Spring Street  
Concord, NH 03301-3902  
(603) 228 1611

Date 15 Sept 05

Claims after first AMENDMENT

1 1.(original) A railroad grade crossing assembly for blocking  
2 access across a railroad crossing, comprising:

3 gate means connectable to a stanchion and movable between a  
4 generally upright position to permit access across the railroad  
5 crossing and a generally horizontal position for blocking access  
6 across the railroad crossing; and

7 programmable electronic means for controlling operation of  
8 said gate means.

1 2.(original) A railroad grade crossing assembly as recited in  
2 claim 1, further comprising a wireless link that is coupled to said  
3 programmable electronic means and is operable to receive  
4 programming instructions for implementation by said programmable  
5 electronic means.

1 3.(original) A railroad grade crossing assembly as recited in  
2 claim 1, wherein said programmable electronic means comprises a  
3 programmable logic controller coupled to one or more relays.

1 4.(currently amended). A railroad grade crossing assembly as  
2 recited in claim 1, further comprising means for electronically  
3 monitoring at least one of usage and ~~and/or~~ status of the assembly.

1 5.(original) A railroad grade crossing assembly as recited in  
2 claim 4, further comprising a wireless link that is coupled to said

3 means for electronically monitoring and is operable to receive data  
4 from said means for electronically monitoring.

1 6.(original) A railroad grade crossing assembly as recited in  
2 claim 4, further comprising a wireless link that is coupled to said  
3 means for electronically monitoring and is operable to transmit  
4 data generated by said means for electronically monitoring to a  
5 remote monitoring station.

1 7.(currently amended) A railroad grade crossing assembly as  
2 recited in claim 1, further comprising one or more cameras for  
3 visually monitoring at least one of the assembly and ~~and/or~~ the  
4 area around the assembly.

1 8.(original) A railroad grade crossing assembly as recited in  
2 claim 1, wherein said gate means includes lights that incorporate  
3 a bulletproof material.

1 9.(original) A railroad grade crossing assembly as recited in  
2 claim 1, wherein said gate means includes lights and a bulletproof  
3 covering for protecting said lights.

1 10.(currently amended) A railroad grade crossing assembly for  
2 blocking access across a railroad crossing, comprising:  
3 gate means connectable to a stanchion and movable between a  
4 generally upright position to permit access across the railroad

5 crossing and a generally horizontal position for blocking access  
6 across the railroad crossing; and

7 telescopic arm means incorporated into said gate means for  
8 selectively ~~automatically completely~~ closing and opening the  
9 railroad crossing in response to a signal ~~when said gate means is~~  
10 ~~in said generally horizontal position~~, said telescopic arm means  
11 being movably incorporated within said gate means and being  
12 selectively operable according to said signal to extend from said  
13 gate means each time said crossing assembly is to block access  
14 across said crossing and retracts according to said signal each  
15 time said crossing assembly is to permit access across said  
16 crossing; and

17 programmable electronic means for controlling operation at  
18 least one of said gate means and said telescopic arm means, wherein  
19 said programmable electronic means provides said signal.

1 11.(original) A railroad grade crossing assembly as recited in  
2 claim 10, further comprising a wireless link that is coupled to  
3 said programmable electronic means and is operable to receive  
4 programming instructions for implementation by said programmable  
5 electronic means.

1 12.(original) A railroad grade crossing assembly as recited in  
2 claim 10, wherein said programmable electronic means comprises a  
3 programmable logic controller coupled to one or more relays.

1 13.(currently amended) A railroad grade crossing assembly as  
2 recited in claim 10, further comprising means for electronically  
3 monitoring at least one of usage and ~~and/or~~ status of the assembly.

1 14.(original) A railroad grade crossing assembly as recited in  
2 claim 13, further comprising a wireless link that is coupled to  
3 said means for electronically monitoring and is operable to receive  
4 data from said means for electronically monitoring.

1 15.(original) A railroad grade crossing assembly as recited in  
2 claim 13, further comprising a wireless link that is coupled to  
3 said means for electronically monitoring and is operable to  
4 transmit data generated by said means for electronically monitoring  
5 to a remote monitoring station.

1 16.(currently amended) A railroad grade crossing assembly as  
2 recited in claim 13, further comprising one or more cameras for  
3 visually monitoring at least one of the assembly and ~~and/or~~ the  
4 area around assembly.

1 17.(currently amended) A railroad grade crossing assembly as  
2 recited in claim 10, wherein at least one of said gate means and  
3 ~~and/or~~ said telescopic arm means includes lights that incorporate  
4 a bulletproof material.

1 18.(currently amended) A railroad grade crossing assembly as



2 recited in claim 10, wherein at least one of said gate means and  
3 ~~and/or~~ said telescopic arm means includes lights and a bulletproof  
4 covering for protecting said lights.

1 19.(original) A railroad grade crossing assembly as recited in  
2 claim 10, further comprising an electric motor for extending and  
3 retracting said telescopic arm means, and wherein said programmable  
4 electronic means is operable to control said motor.

1 20.(original) A railroad grade crossing assembly as recited in  
2 claim 19, wherein said motor is coupled to said telescopic arm  
3 means through a clutch that is released upon failure of said  
4 motor's power supply.